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MEMORANDUM

TO: Interested Parties

FROM: Elizabeth Childs, M.D., Commissioner

DATE: March 8, 2005

RE: Proposed regulations – Restraint and Seclusion Reduction

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I am writing to inform you that the Department of Mental Health will hold a public hearing on April 11, 2005, at Chapel Hall at Worcester State Hospital, on several proposed regulations and emergency regulations, most notably a proposed regulations relative to the Department's continuing efforts to reduce and eliminate the use of restraint and seclusion.

The first proposed regulations replace 104 CMR 27.12, Restraint and Seclusion, with a new regulation entitled Prevention of Restraint and Seclusion and Requirements When Used, and amend certain other provisions in 104 CMR 27.00 to support this change. This represents a major restructuring of the Department's current regulations on restraint and seclusion in inpatient facilities. Over the past several years, the Department of Mental Health has carried out a major initiative to reduce and eliminate the use of restraint and seclusion, and members of the Department's Licensing and Child and Adolescent staff have worked closely with licensed facilities to provide technical support for this initiative. The Department of Mental Health is also a participant in a national grant focused on restraint reduction, which included a commitment to regulatory revision as part of its application. The proposed regulations reflect much of the work that has been done in the child and adolescent provider community and licensee facilities over the past few years, and actually codify much of what is already in process.

Recognizing that standards of care have changed in the intervening years, the proposed regulations change the primary focus to prevention and elimination of episodes of restraint and seclusion and emphasize close clinical and administrative scrutiny,

patient preferences, calming environments, and early release when restraint and seclusion are used. Protections for and limits on the use of restraint and seclusion are retained - and in many cases strengthened - and conform to current JCAHO and CMS requirements. Additionally, the prior regulations were overly complex and sometimes confusing, and the revision attempts to remedy these problems as well.

In addition, a separate proposed regulation, Behavioral Support and Restrictions on Negative Consequences, replaces current 104 CMR 27.10(7), Behavior Management, and represents a complete revision of the Department's current behavior management regulation. Like the current restraint and seclusion regulations, the focus is now largely on protections against the negative aspects of such programs rather than on positive treatment approaches. The revised regulation emphasizes positive behavioral support and individualized planning, while also maintaining and strengthening limits on negative approaches and applies to adults as well.

I believe that these proposed regulations represent an important step to improve clinical practice and outcomes and reflect the significant changes that have been occurring in these areas in the Commonwealth and throughout the country over the past several years. They are consistent with the Department's Restraint Reduction Philosophy Statement, which I issued on March 26, 2004.

The April 11 public hearing will also address the emergency regulations outlined in the attached public notice. These are essentially technical changes. The procedures for attending the public hearing and commenting on and obtaining copies of the proposed and emergency regulations are outlined in the attached notice. The public comment period begins Friday, March 11, 2005, and ends on Monday, April 18, 2005. I welcome your comments on them.